IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3957 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRAKUMAR H KHANNA

Versus

SALES TAX OFFICER (5)

Appearance:

1. Special Civil Application No. 3957 of 2004
MR RK SHAH with MR SUDHIR M MEHTA for Petitioner No. 1
MR SIRAJ GORI AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 13/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP waives service of Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the detention of the goods being tins of ghee which were in transit from Delhi to Ahmedabad on 16.1.2004.

2. The goods were intercepted by the Sales-tax department Officers and on the ground that there was evasion of sales-tax they have been detained. The petitioner claims to have purchased these goods in transit from DC Food Industries Pvt.Ltd. and ST Sales Corporation who are shown as consignees in the transport documents produced by the transporter before the Sales-tax authorities.

4. The learned AGP for the respondents opposes the petition and submits that the petitioner has no right to claim the goods as the DC Food Industries & Pvt. Ltd. and ST Sales Corporation are not shown to be genuine entities and that the sales-tax numbers mentioned in the documents are also not genuine.

5. We are of the view that while it is open for the department to take appropriate action in accordance with law, looking to the fact that the goods in question being tins of ghee are a perishable commodity, it would be as much in the interest of the revenue to see that the perishable commodity is appropriately dealt with at the earliest and at the same time the Government dues are secured.

There is also no dispute about the fact that the local sales-tax payable on the commodity is at the rate of 8% and that the value of the goods is about Rs.8 lakhs. It would mean that the sales-tax payable would be Rs.64,000/-. Even assuming that the respondents would be justified in demanding sales-tax as well as penalty of equal amount, in no case, would the purchaser be liable to deposit anything more than Rs.1,28,000/-.

6. In order to prevent any deterioration of the goods and in order to secure the tax dues, we dispose of this petition with a direction that upon the petitioner or the transporter depositing a sum of Rs.1,28,000/-, the respondents shall release the goods being tins of ghee

seized by the respondents on 16.1.2004. The goods shall be handed over to the transporter in presence of the petitioner. If there is any other person claiming ownership of the goods, it would be open to the respondents to inform such party, but, in any case, the goods shall be returned to the transporter within one week from today and after the aforesaid amount of Rs.1,28,000/- is deposited with respondent No.1.

It is clarified that we have not gone into the merits of the contention about genuineness or otherwise of any party or any tax liability or liability for penalty. The respondents shall decide these aspects in accordance with law. If any amount is liable to be refunded, the amount shall be refunded to the party which deposits the amount. If any amount is required to be adjusted against the tax liability/penalty liability, the same shall be adjusted out of the amount of Rs.1,28,000/to be deposited.

7. The petition is accordingly disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/-